

# **EXHIBIT D-5**

**CAUSE NO. 21-01-01381**

**WALTER C. SAENZ, and WCS  
LEASING, L.L.C., d/b/a MARS  
RECOVERY,**

*Plaintiffs,*

**v.**

**U.S. BANK, N.A.,**

*Defendant.*

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**IN THE COUNTY COURT AT LAW**

**NUMBER TWO**

**MONTGOMERY COUNTY, TEXAS**

**DEFENDANT'S ORIGINAL ANSWER**

Defendant U.S. Bank National Association ("Defendant") files this Original Answer and respectfully shows the following:

**I.  
GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every allegation in Plaintiffs Walter C. Saenz and WCS Leasing, L.L.C. d/b/a Mars Recovery's ("Plaintiffs") *Original Petition with Discovery* (the "Petition"), as well as any and all amended or supplemental petitions, and demands strict proof thereof.

**II.  
ENTITLEMENT TO RECOVERY OF ATTORNEY FEES**

Defendant seeks its attorney fees, costs, and expenses in this litigation pursuant to applicable law. Defendant seeks all other and further relief, at law or in equity, to which it may be justly entitled.

**II.  
AFFIRMATIVE AND OTHER DEFENSES**

In addition to its general denial, Defendant asserts the following affirmative and other defenses without conceding which party bears the burden of proof on such defenses:

1. Plaintiffs fail to state a claim upon which relief can be granted, and therefore, Plaintiffs' claims should be dismissed.

2. Plaintiffs' claims are barred, in whole or in part, because they have failed to allege and prove all conditions precedent to recovery.

3. Plaintiffs' claims are barred, in whole or in part, by the doctrines of estoppel, in all its forms, contractual estoppel, quasi-estoppel, waiver, unclean hands, laches, and/or other equitable doctrines.

4. Plaintiffs' claims are barred, in whole or in part, by a lack of standing.

5. Plaintiffs' claims are barred, in whole or in part, by fraud and/or perjury.

6. Plaintiffs' claims are barred, in whole or in part, by the economic loss rule.

7. Plaintiffs' claims are barred, in whole or in part, by reason of Plaintiffs' failure to comply with applicable statutes and other provisions of law, including but not limited to the Texas Property Code and the Texas Occupations Code, relating to the subject collateral, the towing of the subject collateral, notices relating thereto, and foreclosure/sale of Plaintiffs' alleged lien on the subject collateral, among others.

8. Plaintiffs' claims are barred, in whole or in part, by reason of Defendant's compliance with applicable statutes and other provisions of law.

9. Plaintiffs' claims are barred, in whole or in part, by their failure to allege facts sufficient to state a claim for any damages.

10. Plaintiffs' claims are barred, in whole or in part, because Defendant's acts and/or omissions were not the cause of Plaintiffs' damages, if any. Rather, Plaintiffs' damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and/or entities, including Plaintiffs themselves, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiffs' damages, if any.

11. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate their damages, if any.

12. Defendant is not liable for the acts, omissions, or conduct of other persons or entities not authorized to act on its behalf; pleading further, and in the alternative, Defendant is not liable for the acts, omissions, or conduct of its agents who exceeded the scope of their authority.

13. Plaintiffs' attorneys' fees are not recoverable, reasonable, or necessary.

14. Plaintiffs' claims may also be barred by additional defenses that may arise during the course of this litigation, which defenses Defendant reserves the right to assert.

**IV.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant prays that, upon final hearing hereof, judgment be rendered that Plaintiffs take nothing by this suit, and that Defendant be awarded its costs and expenses, as well as such other and further relief, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Elizabeth Hayes

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record pursuant to the Texas Rules of Civil Procedure *via e-service and certified mail, return receipt requested* on this 1st day of March 2021.

*/s/ Elizabeth Hayes*

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Attorney for Defendant